

ORDINANCE NO. 9-2014-01 INTRODUCED BY: Dan McGinn  
PETITIONER: Evansville Hotel Partners II, LLC

**AN ORDINANCE TO VACATE A PUBLIC RIGHT-OF-WAY: 1) ALL OF THE 12' PUBLIC UTILITY AND DRAINAGE EASEMENT LYING ON THE COMMON LINE OF LOTS 23 AND 24 IN EAGLE CREST, SECTION 2, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK O, PAGE 152 IN THE OFFICE OF THE RECORDER OF VANDERBURGH COUNTY, INDIANA.:**

**WITHIN THE CITY OF EVANSVILLE, INDIANA, COMMONLY KNOWN 7831 AND 7901 E WALNUT ST.**

BE IT ORDAINED by the Common Council of the City of Evansville, Indiana, as follows, to-wit:

Section I. That pursuant to MCE Section 12.05.450, a sworn petition, was presented to the Common Council of the City of Evansville, requesting that the platted right-of-way described in Section III, below, be vacated by the City of Evansville.

Section II. That after due and proper notice, a timely public hearing was convened by the Common Council, at which time all interested persons were permitted to address the Common Council regarding said vacation.

Section III. That the Common Council of the City of Evansville, after due investigation and consideration, has determined that the nature and extent of the public use and the public interests to be subserved are such as to warrant the vacation of that part of the platted RIGHT-OF-WAY described as follows, and further indicated by the words "To Be Vacated" on the drawing hereto attached, which is made a part of this Ordinance:

Part of Lots 23 and 24 in Eagle Crest Section 2, recorded in Plat Book O, page 152, in the Recorder's Office of Vanderburgh County, Indiana, and being described as follows:

Beginning at the Southeast Corner of said Lot 24; thence along the south line of said Lot 24, South 89 degrees 58 minutes 34 seconds West 6.00 feet; thence parallel with the east line of said Lot 24, North 00 degrees 23 minutes 59 seconds East 198.27 feet to the south line of a 5 foot Public Utility Easement, as shown on said Eagle Crest Section 2 Plat; thence along said south line and parallel to the north line of said Lot 24, North 89 degrees 50 minutes 42 seconds East 12.00 feet, passing the common line between Lots 23 and 24 at 6.00 feet; thence parallel to the west line of said Lot 23 South 00 degrees 23 minutes 59 seconds West 198.30 feet to the south line of said Lot 23; thence along said south line, South 89 degrees 58 minutes 34 seconds West 6.00 feet to the point of beginning. Containing 2,379 square feet (0.05 Acres), more or less.

(See attached Exhibit)

Section IV. That the vacation of said public ways described in Section III. above will be subject to the following easements and reservations:

City Engineer's Requirement for Easement Vacation

- 1) All of the 12' Public Utility and Drainage Easement to be vacated will be subject to the following: The City Engineer's Office is agreeable to the vacation of the existing drainage easement and corresponding facilities only if a new drainage easement is established and new drainage facilities are installed. The new easement and facilities shall accommodate the existing drainage patterns and cause no disruption of the intended function of the existing system. The new drainage facilities will need to be installed prior to abandoning the existing facilities. If these commitments are agreeable, this office has no objections to the proposed vacation. Any plans for future

**FILED**

**DEC 22 2015**

improvements on lots 23 and 24 will require the necessary submittals, reviews, approvals, and permitting procedures.

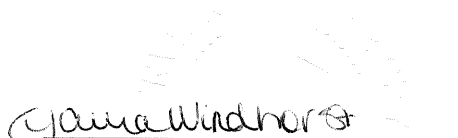
WOW Requirement for Easement Vacation


- 2) As a result of these findings, SIGECOM/WOW determined that it does have cabling that crosses the "Easement Area for Approval" exhibited in the provided drawing titled "9549 Civil Base 2.1 WOW Fiber Relo" and continuing through the 12' easement running between lots 23 and 24. SIGECOM/WOW does not object to any proposed vacation and will need to retain an easement granted in its favor for placement and maintenance of telecommunication facilities that lies within this said vacation petition. If utilities are requested to be relocated SIGECOM/WOW will relocate granting a mutually agreed upon cost reimbursement for the SIGECOM/WOW facilities located within the subject right-of-way area.
- 3) The Evansville Water & Sewer Utility has an existing 8-inch sanitary sewer located in an easement running perpendicular and crossing the proposed vacation. The EWSU is requiring this perpendicular 12-foot easement to remain intact and or modified to extend across the proposed area to be vacated.

Therefore, the Common Council of the City of Evansville, Indiana, does hereby find the above-described PUBLIC RIGHT-OF-WAY is no longer required for public use, and the public interest will be served by such vacation, and the Common Council of the City of Evansville does hereby vacate the PUBLIC RIGHT-OF-WAY described in Section III, above, subject to the terms and conditions as stated in this Ordinance.

PASSED by the Common Council of Evansville, Indiana, on this 25 day of January, 2016, and on said day signed by the President of said Common Council and attested to by the City Clerk.

ATTEST:

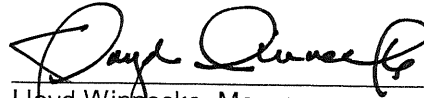
  
Laura Brown Windhorst, City Clerk

  
Missy Mosby, President

Presented by me, the undersigned, City Clerk of the City of Evansville, Indiana, to the Mayor of said City, the 26 day of January, 2016.

  
Laura Brown Windhorst, City Clerk

Having examined the foregoing Ordinance, I do now as Mayor of said City of Evansville, Indiana, approve said Ordinance, and return; same to the City Clerk this 26 day of JANUARY, 2016 at 3:00 p.m.

  
Lloyd Winnecke, Mayor  
City of Evansville, Indiana

APPROVED AS TO FORM:  
Ted Ziemer-Corporate Counsel

This instrument was prepared by Danny K Leek of Morley and Associates, Inc., 4800 Rosebud Lane, Newburgh, Indiana 47630

Petitioner's Mailing Address:

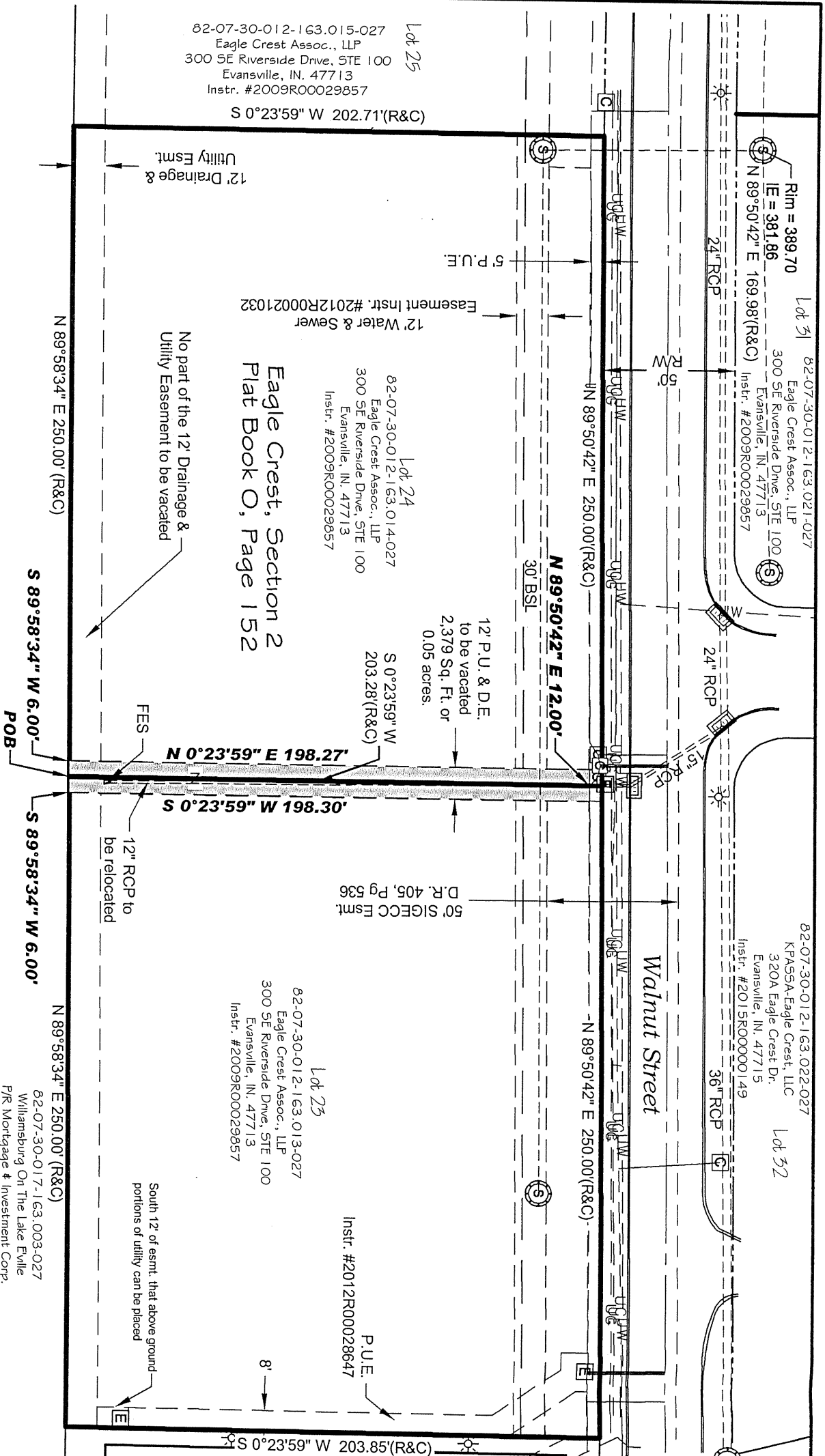
Evansville Hotel Partners II, LLC  
300 SE Riverside DR., STE 100  
Evansville, IN 47713

"I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law." 

|             |             |
|-------------|-------------|
| Designed By | Job Number: |
| DKL         | 9549.4.001A |
| Drawn By    | Date:       |
| DKB         | 9/3/2015    |

Filename: 9549 Easement Vacation

THIS IS NOT A BOUNDARY SURVEY, THIS IS A DESCRIPTION EXHIBIT, SHOWING THE PROPOSED VACATED PUBLIC UTILITY AND DRAINAGE EASEMENT LOTS 23 AND 24 FAGE CREST SECTION 2



**SWORN PETITION FOR VACATION** of the following public right-of-way: , 1) all of the 12' Public Utility and Drainage Easement lying on the common line of Lots 23 and 24 in Eagle Crest, Section 2, as per plat thereof, recorded in Plat Book O, Page 152 in the office of the Recorder of Vanderburgh county, Indiana

Regarding the vacation of the following public right-of-way: 1) all of the 12' Public Utility and Drainage Easement lying on the common line of Lots 23 and 24 in Eagle Crest, Section 2, as per plat thereof, recorded in Plat Book O, Page 152 in the office of the Recorder of Vanderburgh county, Indiana

Evansville Hotel Partners II, LLC (the Petitioner), files this Sworn Petition for Vacation of an existing public right-of-way, to the Common Council of the City of Evansville, Indiana, in accordance with the Municipal Code of Evansville, Subchapter 12.05.450 et. seq. (the code), as follows:

1. Name and address of Petitioners: Evansville Hotel Partners II, LLC  
300 SE Riverside DR., STE 100  
Evansville, IN 47713

By: John M. Dunn Its: Managing Member

Principal place of business:  
300 SE Riverside DR., STE 100  
Evansville, IN 47713

2. Circumstances: Petitioners seek the vacation of the above noted right of way to construct a new building and parking lot.

3. Legal Description of the right-of-way proposed to be vacated:

Part of Lots 23 and 24 in Eagle Crest Section 2, recorded in Plat Book O, page 152, in the Recorder's Office of Vanderburgh County, Indiana, and being described as follows:

Beginning at the Southeast Corner of said Lot 24; thence along the south line of said Lot 24, South 89 degrees 58 minutes 34 seconds West 6.00 feet; thence parallel with the east line of said Lot 24, North 00 degrees 23 minutes 59 seconds East 198.27 feet to the south line of a 5 foot Public Utility Easement, as shown on said Eagle Crest Section 2 Plat; thence along said south line and parallel to the north line of said Lot 24, North 89 degrees 50 minutes 42 seconds East 12.00 feet, passing the common line between Lots 23 and 24 at 6.00 feet; thence parallel to the west line of said Lot 23 South 00 degrees 23 minutes 59 seconds West 198.30 feet to the south line of said Lot 23; thence along said south line, South 89 degrees 58 minutes 34 seconds West 6.00 feet to the point of beginning. Containing 2,379 square feet (0.05 Acres), more or less.

4. Names, addresses, and zip codes of all owners of land within 200 feet of the rights-of-ways to be vacated.

See attached Exhibit "A".

5. Location Map and Site Plan  
See attached Exhibit "B" & "C"

6. Copies of letters from Vectren, AT&T, WOW Communications, Time Warner Cable, Evansville Water and Sewer Utility and the Evansville City Engineer are attached as Exhibits "D" through "I", inclusive.
7. Easement Area for Approval Exhibit indicating proposed relocation of WOW cabling attached as Exhibit "J".

That the above described right of way to be vacated, based upon the comments from the above operating utilities, will be subject to the following easements and reservations:

City Engineer's Requirement for Easement Vacation

- 1) All of the 12' Public Utility and Drainage Easement to be vacated will be subject to the following: The City Engineer's Office is agreeable to the vacation of the existing drainage easement and corresponding facilities only if a new drainage easement is established and new drainage facilities are installed. The new easement and facilities shall accommodate the existing drainage patterns and cause no disruption of the intended function of the existing system. The new drainage facilities will need to be installed prior to abandoning the existing facilities. If these commitments are agreeable, this office has no objections to the proposed vacation. Any plans for future improvements on lots 23 and 24 will require the necessary submittals, reviews, approvals, and permitting procedures.

WOW Requirement for Easement Vacation

- 2) As a result of these findings, SIGECOM/WOW determined that it does have cabling that crosses the "Easement Area for Approval" exhibited in the provided drawing titled "9549 Civil Base 2.1 WOW Fiber Relo" and continuing through the 12' easement running between lots 23 and 24. SIGECOM/WOW does not object to any proposed vacation and will need to retain an easement granted in its favor for placement and maintenance of telecommunication facilities that lies within this said vacation petition. If utilities are requested to be relocated SIGECOM/WOW will relocate granting a mutually agreed upon cost reimbursement for the SIGECOM/WOW facilities located within the subject right-of-way area.

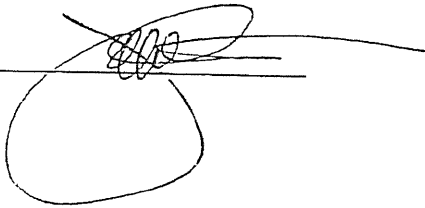
Evansville Water & Sewer Utility Requirement for Easement Vacation

- 3) The Evansville Water & Sewer Utility has an existing 8-inch sanitary sewer located in an easement running perpendicular and crossing the proposed vacation. The EWSU is requiring this perpendicular 12-foot easement to remain intact and or modified to extend across the proposed area to be vacated.

IN WITNESS THEREOF, the undersigned has caused this petition to be executed this 11<sup>TH</sup> day of DECEMBER, 2015.

Evansville Hotel Partners II, LLC

By: \_\_\_\_\_



Printed: John M. Dunn

Its: Manager

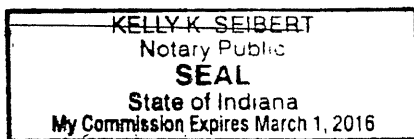
State of Indiana  
County of Vanderburgh ) SS

Before me, the undersigned Notary Public in and for said county and state, personally appeared the above named John M. Dunn he being first duly sworn by me upon their oath, says that the facts alleged in the foregoing Affidavit are true.

Signed and sealed this 11 day of December, 2015

Kelly K. Seibert  
Notary Public  
Kelly K. Seibert  
(printed name)

My commission expires:



Project 9549.4.001A  
"Exhibit A"  
September 21, 2015

Adjoiners within 200' of 7901  
and 7831 E Walnut Street being  
Lots 23 and 24 in Eagle Crest,  
Section Two

J:9549.4.001A/surveying/documents/adjoiners'  
list

82-07-30-012-163.014-027  
82-07-30-012-163.013-027  
82-07-30-012-163.012-027  
82-07-30-012-163.021-027  
82-07-30-012-163.015-027

Eagle Crest Associates, LLP  
300 SE Riverside DR., STE 100  
Evansville, IN 47713

82-07-30-012-163.022-027  
KPASSA-Eagle Crest, LLC  
320A Eagle Crest Dr.  
Evansville, IN 47715

82-07-30-017-163.003-027  
Williamsburg on The Lake E'ville  
P/R Mortgage & Investment Corp  
11555 N Meridian  
Carmel, IN 46032



Lot 31  
82-07-30-012-163.021-027  
Eagle Crest Assoc., LLP  
300 SE Riverside Drive, STE 100  
Evansville, IN. 47713  
Instr. #2009R00029857

Lot 32  
82-07-30-012-163.022-027  
KPASSA-Eagle Crest, LLC  
320A Eagle Crest Dr.  
Evansville, IN. 47715  
Instr. #2015R00000149

Lot 25  
82-07-30-012-163.015-027  
Eagle Crest Assoc., LLP  
300 SE Riverside Drive, STE 100  
Evansville, IN. 47713  
Instr. #2009R00029857  
S 0°23'59" W 202.71'(R&C)

Lot 24  
82-07-30-012-163.014-027  
Eagle Crest Assoc., LLP  
300 SE Riverside Drive, STE 100  
Evansville, IN. 47713  
Instr. #2009R00029857

Eagle Crest, Section 2  
Plat Book O, Page 152

N 89°58'34" E 250.00' (R&C)

S 89°58'34" W 6.00' POB

N 89°58'34" E 250.00' (R&C)

12' Drainage & Utility Esmt.

No part of the 12' Drainage & Utility Easement to be vacated

N 0°23'59" E 198.27'

S 0°23'59" W 198.30'

12" RCP to be relocated

South 12' of esmt. that above ground portions of utility can be placed

5' P.U.E.

12' P.U. & D.E. to be vacated 2,379 Sq. Ft. or 0.05 acres.

50' SIGECC Esmt. D.R. 405, Pg 536

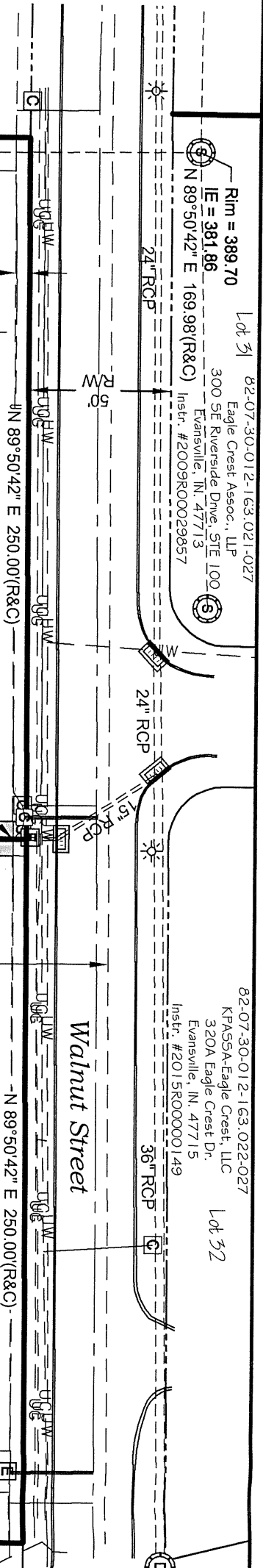
Lot 23  
82-07-30-012-163.013-027  
Eagle Crest Assoc., LLP  
300 SE Riverside Drive, STE 100  
Evansville, IN. 47713  
Instr. #2009R00029857

Lot 25  
Instr. #2012R00028647  
P.U.E.

S 0°23'59" W 203.85'(R&C)

N 89°50'42" E 260.00'(R&C)

N 89°50'42" E 12.00'



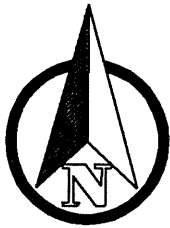
**Morley and Associates Inc.**  
Engineering  
Surveying  
Architecture  
Construction Management  
4800 Rosebud Lane  
Newburgh, IN 47630  
(812) 464-9585  
www.morleyandassociates.com

Public Utility and Drainage  
Easement Vacation Exhibit  
Lots 23 and 24 Eagle Crest, Section 2  
Plat Book O, Page 152, Evansville, IN

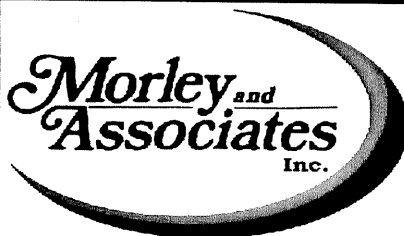
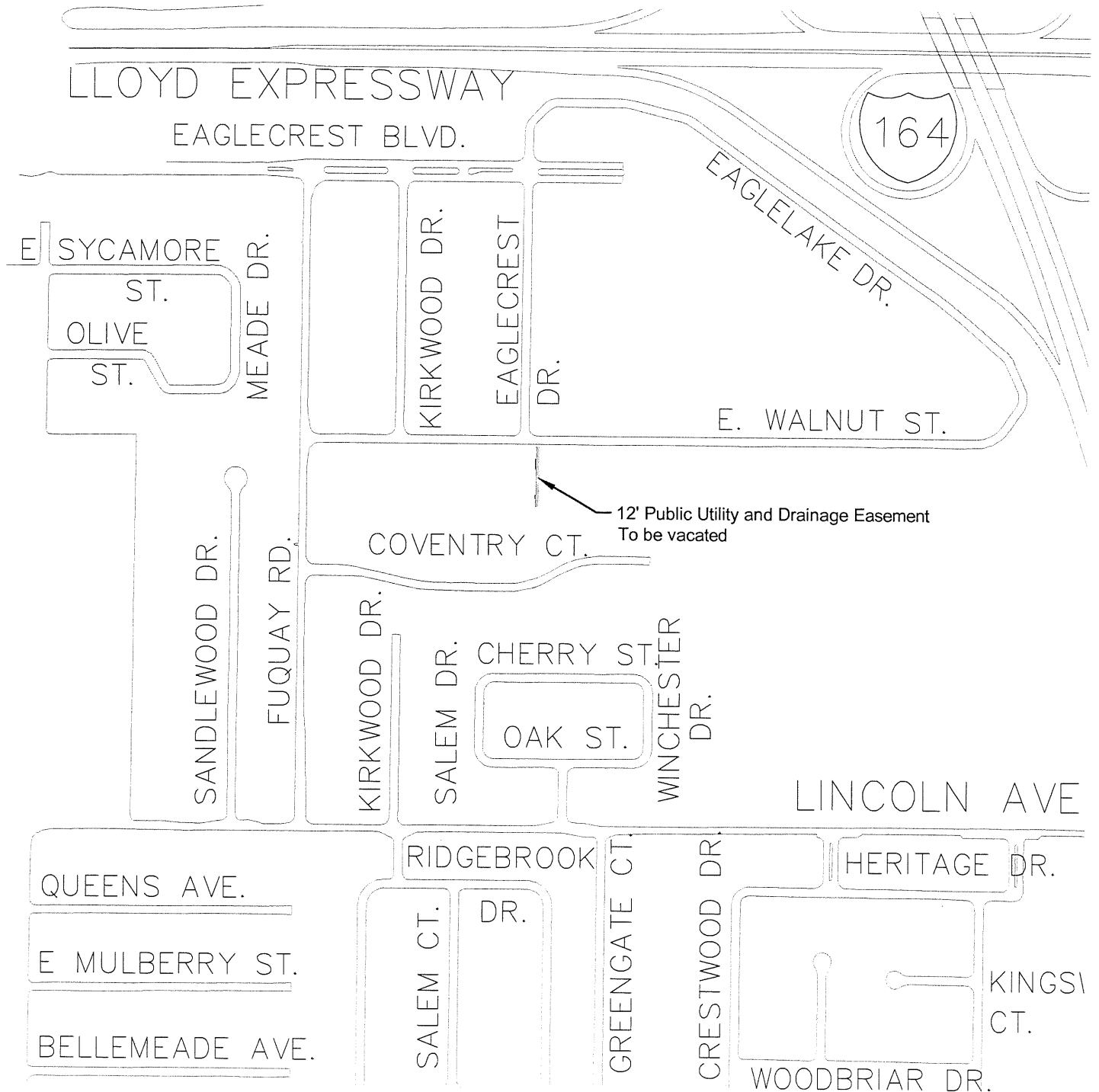
|              |                        |             |             |
|--------------|------------------------|-------------|-------------|
| Designed By: | DKL                    | Job Number: | 9549.4.001A |
| Drawn By:    | DKB                    | Date:       | 9/3/2015    |
| Filename:    | 9549 Easement Vacation |             |             |

THIS IS NOT A BOUNDARY SURVEY, THIS IS A DESCRIPTION EXHIBIT, SHOWING THE PROPOSED VACATED PUBLIC UTILITY AND DRAINAGE EASEMENT OF LOTS 23 AND 24, EAGLE CREST SECTION 2

82-07-30-017-163.003-027  
Williamsburg On The Lake Ev'ille  
P/R Mortgage & Investment Corp.  
11555 N Meridian St. STE 400  
Carmel, IN. 46032  
Deed Dr. 2, Card 6531



**SCALE 1" = 500'**



Engineering  
Surveying  
Architecture  
Construction Management

4800 Rosebud Lane  
Newburgh, IN 47630  
(812) 464-9585  
www.morleyandassociates.com

EXHIBIT "C"

Location Map  
12' Public Utility and Drainage  
Easement Exhibit

|   |                            |
|---|----------------------------|
| Designed By:<br>DKB                     | Job Number:<br>9549.4.001A |
| Drawn By:<br>DKB                        | Date:<br>10/30/2015        |
| Filename:<br>9549 Vacation Location Map |                            |



Energy Delivery

P.O. Box 209

Evansville, Indiana 47702-0209

September 30, 2015

Danny K. Leek  
Morley and Associates Inc.  
4800 Rosebud Lane  
Newburgh IN 47630

Re: Vacation of 12' Public Utility & Drainage Easement on Lots 23 & 24 in Eagle Crest Sec 2

Petitioner: Dunn Hospitality Group

Dear Mr. Leek:

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana investigated the area proposed for vacation.

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana has no facilities located within the above described location according to the attached information you provided on September 3, 2015. This company, therefore, has no objection to its vacation.

The consent granted by Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana for said vacation is valid for ninety (90) days. This is due to the constant installation of our facilities at numerous locations. If this vacation request is not petitioned and passed by the Common Council within this time period, this letter becomes invalid, requiring a new study to be done by Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana.

Please forward to me a copy of the recorded ordinance upon passing so that I may update our records. Thank you for your cooperation.

Sincerely,

Becky Merkley, SR/WA  
Land Agent  
Land Services  
Vectren Energy Delivery of Indiana  
812 491 4544

EXHIBIT "D"



134 NW Sixth Street  
Evansville, Indiana 47708

September 24, 2015

Danny Leek  
Morley & Associates, Inc.  
4800 Rosebud Lane  
Newburgh, Indiana 47630  
[danny@morleyandassociates.com](mailto:danny@morleyandassociates.com)

RE: Lots 23 – 24 Eagle Crest Section 2  
7831-7901 Walnut Street, Evansville, Indiana  
Project 9549.4.001A

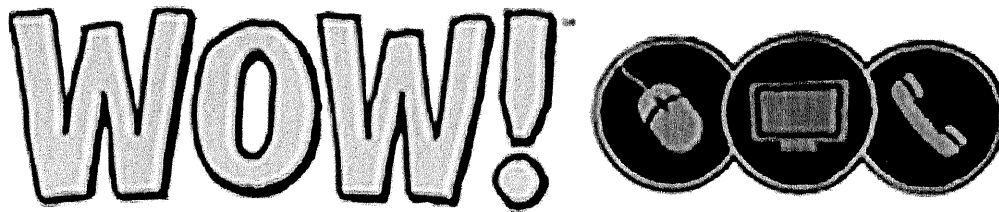
Danny,

AT&T Indiana has no objection to the vacation of the 12' public utility easement and drainage easement between lots 23 & 24 Eagle Crest Section 2, exclusive of the public utility easement adjacent an parallel to Walnut Street, as described in your letter and Exhibit "C" of September 3, 2015.

If you have any questions, please email or call me at 812/464-6050.

Regards,

Marc Clark  
AT&T Design Engineer  
[mc3429@att.com](mailto:mc3429@att.com)



It's that kind of experience.

November 5, 2015

Morley & Associates Inc.  
Attn: James E. Morley  
4800 Rosebud Ln.  
Newburgh, IN. 47630

Attn: James E. Morley, Doug Bacon & Robert Sterner

RE: Lots 23 and 24 in Eagle Crest Section 2  
7901 and 7831 E. Walnut St  
Evansville, Indiana  
Project No. 9549.4.001A

Dear Mr. Bacon,

The SIGECOM/WOW Construction Engineering department reviewed the request for an easement vacation letter regarding Lots 23 and 24 in Eagle Crest Section 27901 and 7831 E. Walnut St. Evansville, Indiana.

As a result of these findings, SIGECOM/WOW determined that it does have cabling that crosses the "Easement Area for Approval" exhibited in the provided drawing titled "9549 Civil Base 2.1 WOW Fiber Relo" and continuing through the 12' easement running between lots 23 and 24. SIGECOM/WOW does not object to any proposed vacation and will need to retain an easement granted in its favor for placement and maintenance of telecommunication facilities that lies within this said vacation petition. If utilities are requested to be relocated SIGECOM/WOW will relocate granting a mutually agreed upon cost reimbursement for the SIGECOM/WOW facilities located within the subject right-of-way area.

This letter granted by SIGECOM/WOW for conditional vacation is valid for one hundred and eighty (180) days.

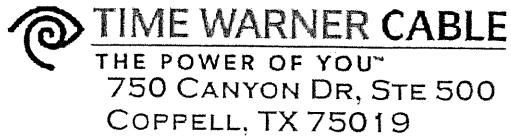
Please contact my office should you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Cheski".

Tom Cheski  
Construction Engineer  
WOW! Internet-Cable-Phone  
Office - 812-437-0395  
Mobile - 812-470-4572  
Email - thomas.cheski@wowinc.com

EXHIBIT "F"



November 9, 2015

Douglas K. Bacon  
Morley and Associates, Inc.  
4800 Rosebud Lane  
Newburgh, IN 47630

SUBJECT: Morley and Associates - 9549.4.001A - Drainage Easement - Walnut

We have reviewed your request for the above referenced Utility Easement, and Time Warner Cable (TWC) hereby grants the abandonment of drainage between 7831 and 7901 E Walnut Street in Evansville, IN.

If applicable, please contact the INDIANA Excavation Safety System (INDIANA 811) to have facilities marked & located within affected easements before any excavations are started.

For future reference, please send all utility coordination, abandonments, encroachments, plat signatures, or serviceability requests, or notices of relocation to [west-engineering-relo@twcable.com](mailto:west-engineering-relo@twcable.com). Please share this information with whoever needs these services.

Sincerely,

Lisa Law  
Manager of Data Operations  
Time Warner Cable  
750 Canyon Drive  
Coppell, TX 75019  
1-972-537-5323

EXHIBIT "G"



LLOYD WINNECKE  
MAYOR

**EVANSVILLE WATER &  
SEWER UTILITY**

ALLEN R. MOUNTS  
DIRECTOR

1 NW Martin Luther King Blvd. Room 104 • Evansville, Indiana 47708  
P O Box 19, Evansville, Indiana 47740-0001  
(812) 436-7846 • FAX (812) 436-7863 • TDD (812) 436-7864

October 14, 2015

Mr. Danny Leek  
Morley and Associates, Inc.  
4800 Rosebud Lane  
Newburgh, IN 47630

Re.: Easement Vacation  
Eagle Crest Section 2; 7901 & 7831 E. Walnut Street

Mr. Leek,

This letter is in response to your inquiry concerning the vacation request identified above. The Evansville Water & Sewer Utility has an existing 8-inch sanitary sewer located in an easement running perpendicular and crossing the proposed vacation. The EWSU is requiring this perpendicular 12-foot easement to remain intact and or modified to extend across the proposed area to be vacated.

If you have any questions, please call me at 421-2130 x2228.

Sincerely,

A handwritten signature in cursive script that reads "Michael D. Labitzke".

Michael D. Labitzke, PE  
Deputy Director of Utilities - Engineering

EXHIBIT "H"



**City Engineer's Office**  
CIVIC CENTER COMPLEX, ROOM 321  
1 N.W. MARTIN LUTHER KING, JR. BLVD.  
EVANSVILLE, INDIANA 47708-1875  
Phone: (812) 436-4990 FAX: (812) 436-4976  
TDD/Hearing Impaired (812) 436-4934

LLOYD WINNECKE  
MAYOR

BRENT A. SCHMITT, P.E.  
CITY ENGINEER

September 29, 2015

Danny K Leek  
**Morley and Associates, Inc**  
4800 Rosebud Lane  
Newburgh, IN 47630

Re: Proposed Vacation of Drainage Easement, Lots 23 and 24, Eagle Crest Section 2

Your Project Number: 9549.4.001A

Dear Mr. Leek,

In regards to your letter dated September 3, 2015, requesting our comments on the proposed vacation of an existing 12' P.U. and D.E. along the common north-south line of Lots 23 and 24 of Eagle Crest Section 2, the following comments are provided:

Our office is agreeable to the vacation of the existing drainage easement and corresponding facilities only if a new drainage easement is established and new drainage facilities are installed. The new easement and facilities shall accommodate the existing drainage patterns and cause no disruption of the intended function of the existing system. The new drainage facilities will need to be installed prior to abandoning the existing facilities. If these commitments are agreeable, this office has no objections to the proposed vacation. Any plans for future improvements on lots 23 and 24 will require the necessary submittals, reviews, approvals, and permitting procedures.

Thank you and please feel free to contact me if you have any questions.

Sincerely,

**City Engineer's Office**

By: Chris Weil, P.E.  
Assistant City Engineer

Attachments

Cc: File

EXHIBIT "E"